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Sent: Tuesday, May 10, 2005 12:46 PM

To: De Bie, Mark; Chuck White (E-mail); Charles Helget (E-mail)

Cc: Paul Sherman; Elizabeth Garcia

Subject: AB 1497 discussions

Thanks for your time yesterday to review the Issues associated with the regulatory development process in response to the requirements of AB 1497. During our discussion, I made reference to several PRC and Title 14 sections related to significant/substantial change. The references and associated discussion are below. I would like to advance the idea that "substantial" change and "significant change" are one in the same for our purposes. Accordingly, the definition of "substantial change" can be used to define "significant change" for the necessary permitting purposes (simply substitute "significant" for "substantial"). The benefits of using this already constructed definition are several-fold, and include linking "significance" to the environment, to the CEQA process (which has volumes of case law supporting and interpreting the process), and to an already defined and used (comparable) term. Furthermore, use of the "substantial change" term and its relation to CEQA would greatly assist the "discretionary" permit process as it would clearly identify when a discretionary "project" is also a "CEQA project", and therefore, subject to environmental review in order to process a change to the permit. Recall from our discussions, that I suggest that non-discretionary permit changes ("non-discretionary projects") would, by definition, not be a "significant change" and, consequently, never a "CEQA project".

The question of needing a revised permit is controlled by Public Resources Code ("PRC") section 44004(a), which provides,

An operator of a solid waste facility may not make a significant change in the design or operation of the solid waste facility that is not authorized by the existing permit, unless the change is approved by the enforcement agency, the change conforms with this division and all regulations adopted pursuant to this division, and the terms and conditions of the solid waste facilities permit are revised to reflect the change.

In other words, no revision to a SWFP is needed if the proposed change is insignificant. Section 44004(a)'s term "significant change" is not defined.

A similar term - "substantial change" - is used in a similar way in PRC section 42812, which provides,

Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the issuance of a permit for the operation of an existing waste tire facility pursuant to this chapter, except as to any substantial change in the design or operation of the waste tire facility made between the time this chapter becomes effective and the permit is initially issued by the board and as to any subsequent substantial changes made in the design or operation of the waste tire facility.

"Substantial change" is defined at 14 CCR section 17225.800:

For the purpose of PRC section 42812, "Substantial Change" means any change that may cause a significant effect on the environment. Significant effect on the environment shall have the same meaning as provided in the State California Environmental Quality Act (CEQA) Guidelines. The determination of significant effect shall be

made in accordance with section 15064 of the State CEQA Guidelines (Title 14 of the California Code of Regulations).

In other words, the standard for whether a change is "substantial" under section 42812 is the same as the standard for whether the change requires preparation of an environmental impact report ("EIR") under CEQA. By analogy, these authorities support the application of same standard for the question of whether a change is "significant" under section 44004(a). Thus, these authorities support the conclusion that if an EIR is not required, a revision to the PPLF SWFP is not required. However, as we talked yesterday, there may be need to "modify" a permit.

Give me a call if you have questions. Also, a quick reminder that Michael was going to provide a brief discussion of the CIWMB's position that there is a connection between a CUP and a SWFP.